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Lyle W. Cayce, Clerk
U.S. Court of Appeals
for the Fifth Circuit
600 S. Maestri Place
New Orleans, LA 70130-3408

RE: *Convergys Corp. v. NLRB*, Case No. 15-60860

Dear Mr. Cayce:

Pursuant to Fed R. App. P. 28(j), we bring the Court's attention to two recent decisions relevant to Convergys' position in the above-referenced lawsuit. These cases support Convergys' argument that a class or collective waiver does not violate Section 8(a)(1) of the National Labor Relations Act (the "Act"), consistent with the Fifth Circuit's decision in *D.R. Horton, Inc. v. NLRB*, 737 F.3d 344 (5th Cir. 2013), *denying enforcement in relevant part of 357 NLRB 2277* (2012), *petition for reh'g en banc denied*, 5th Cir. No. 12-60031 (April 16, 2014). See Convergys Brief at 8-13.

In *Citi Trends, Inc. v. NLRB*, No. 15-60913, 2016 WL 4245458, at *1 (5th Cir. Aug. 10, 2016), the Fifth Circuit Court of Appeals granted Citi Trends's petition for review of the National Labor Relation Board's Decision and Order which found that Citi Trends' Mandatory Arbitration Agreement was unlawful because it "requires employees to waive their right to maintain class or collective actions in all forums, whether arbitral or judicial." *Id.* In granting Citi Trends's petition for review and denying the National Labor Relations Board's cross-application for enforcement of its order, the Fifth Circuit relied upon its earlier decisions in *D.R. Horton, Inc. v. NLRB*, 737 F.3d 344 (5th Cir. 2013), *denying enforcement in relevant part of 357 NLRB 2277* (2012), *petition for reh'g en banc denied*, 5th Cir. No. 12-60031 (April 16, 2014), and *Murphy Oil USA, Inc. v. NLRB*, 808 F.3d 1013 (5th Cir. 2015), *denying enforcement in relevant part of 361 NLRB No. 72*, 2014 WL 5465454 (Oct. 28, 2014), *petition for reh'g en banc denied*, 5th Cir. No. 14-60800 (May 13, 2016), which hold that "an employer does not engage in unfair labor practices by maintaining and enforcing an arbitration agreement prohibiting employee class or collective actions and requiring employment-related claims to be resolved through individual arbitration." *Citi Trends, Inc.*, at *1.

Similarly, in *Patterson v. Raymours Furniture Company, Inc.*, No. 15-2820-CV, 2016 WL 4598542, at *1 (2d Cir. Sept. 2, 2016), *as corrected* (Sept. 7, 2016), *as corrected* (Sept. 14, 2016), the Second Circuit Court of Appeals affirmed the Southern District of New York's decision granting Raymours Furniture Company, Inc.'s motion to compel arbitration pursuant to its Employment Arbitration Program, holding that the Employment Arbitration Program's class action waiver was enforceable. The Second Circuit Court of Appeals decision is consistent with the Second Circuit's decision in *Sutherland v. Ernst & Young LLP*, 726 F.3d 290 (2d Cir. 2013), in which the Court "decline[d] to follow the [NLRB's] decision" in *Horton I* "that a waiver of the right to pursue a FLSA claim collectively in any forum violates the [NLRA]." *Id.* at 297 n.8

Respectfully submitted,

/s/ Jennifer R. Asbrock

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CC: All counsel through CM/ECF

Enclosure

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